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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,982	09/09/2003	Maureen S. Wright	0185.03	4320
25712	7590	06/04/2007	EXAMINER	
USDA-ARS-OFFICE OF TECHNOLOGY TRANSFER NATIONAL CTR FOR AGRICULTURAL UTILIZATION RESEARCH 1815 N. UNIVERSITY STREET PEORIA, IL 61604			LEVY, NEIL S	
ART UNIT		PAPER NUMBER		
1615				
MAIL DATE		DELIVERY MODE		
06/04/2007		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/657,982	WRIGHT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	NEIL LEVY	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 3/02/07.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 11,15,16,21 -26 are is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 11,15,16 and 21-26 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
     Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

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## DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### Claim Rejections - 35 USC § 102

Claim 11, 15 stand rejected under 35 U.S.C. 102(b) as being anticipated  
OSBORNE 4942030

P. fumosoroseus on suitable carriers or vehicles (column 3, lines 19-54) at a spore concentration effective to kill target insects is disclosed. The composition is shown, no patentable weight given to how it acts, future intended use, or inherent effects-killing termites. Absent any further modification claimed, the blastophores are seen as dessication tolerant. TWEEN wetting agent can be used (column 4, bottom) as spray. Desired particle size-granule, powder, dust-is achieved by grinding (column 5, lines 8-31).

Claim 11, 15 stand rejected under 35 U.S.C. 102(b) as being anticipated  
JACKSON 5968808

Here, too are P. fumosoroseus, as dessication resistant spores (column 2, summary). Powder and spray formulation~are shown at example 5.

### *Claim Rejections - 35 USC § 103*

Claims 11, 15, 16, 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over KHADER KHAN et al '93 in view of GUNNER et al WO94/04034.

KHADER KHAN finds p. fumasorosues to be pathogenic to termites (abstract). GUNNAR, of record, finds the p. fumasorosues species in general as useful with g. trabeum (claim 18) the instant secondary termiticide. The preparation of GUNNER's baits of cellulosic material with two entemopathogens including a sufficient number of spores of p. fumasorosues shown lethal to termites would be obvious to the artisan to provide. The particular termite is not at issue, since the composition meets the requirement of providing lethal amounts of spores equal to the instant quantity, thus would be effective to kill the instant termites.

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It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize natural pest control means, to use any of art recognized means, as of the Khader Khan spores, modified as desired to increase stability, dispersibility, compatibility of ingredients, processing ease, & toxicity to termites.

All the critical elements of the instant are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular species and application method of interest, reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects.

Applicant has not provided any objective evidence of criticality, nonobvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed, and the use of ingredient for the functionality for which they are known to be used is not basis for patentability.

The instant invention provides well known old art recognized compounds, with well known art recognized effects, applied by well known art recognized methods to achieve improved control as is well known in the art.

### ***Response to Arguments***

Applicant's arguments filed 2/9/07 have been fully considered but they are not persuasive.

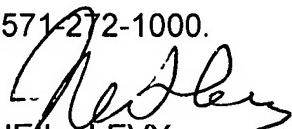
Applicant's arguments are to the effects on particular species, but claimed is a composition, and where not overcome by amendment rejection is instituted, again. Applicant's arguments are to effects, while we find the composition to be obvious.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



NEIL LEVY  
Primary Examiner  
Art Unit 1615

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